



Arizona Department of Agriculture

Office of Pest Management

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January 9, 2013

**Citation
Case #100448**

**Moxie Pest Control (BUS LIC# 8952)
Cynthia Lee Romero (QP LIC #1907)**

The Office of Pest Management (OPM) opened a complaint against Moxie Pest Control (Moxie) and Cynthia L. Romero the qualifying party for allowing applicator Matthew R. Weber to perform pest control services for more than 90 days of employment without being certified (formerly referred to as "licensed").

In June, a Moxie customer informed OPM Compliance staff that after a Moxie applicator performed service at her home, she reviewed the OPM website and noted that none of the applicators for the company were certified. Compliance staff researched the issue and confirmed that Moxie's applicators failed to renew their certification credentials by the 5-31-13 expiration date.

On 6-25-13, in lieu of a complaint, OPM Compliance Supervisor Alan Pugh and Inspector William Hanco conducted a compliance assistance (CA) training class for Moxie Pest business license holder Brian Austin Clark and six applicators. OPM staff also communicated the purpose of the class with Ms. Romero, who was not able to attend the class.

On 6-28-13, Compliance Manager Vince Craig met with Mr. Clark and Ms. Romero. The purpose of the meeting was to discuss the quality of the CA class provided by Inspector Hanco and Supervisor Pugh as well as to address any other issues that were not addressed during the class. Mr. Craig also discussed the new Rules and Statutes (which became effective 9/13/13) with the party as well as reiterated the requirement for the applicators to be certified. Mr. Clark informed Mr. Craig that he would ensure the applicators were certified.

On or about 8-9-13, OPM Compliance staff received another treatment record for a pesticide application that was performed by Moxie applicator Matthew Weber. The application occurred on 8-3-13. Mr. Weber was not certified. In addition, the treatment record was void of a supervising applicator name and certification number.

On 8-12-13, Inspector George Schellhorn researched the OPM licensing database and found that Mr. Weber was employed by Moxie Pest and applied for an applicator license on 4-17-12, but never tested for or received his applicator certification.

The Arizona Law that was in effect during this incident required an applicator to be licensed within 90 days of employment (or when they first applied a pesticide). However, Moxie treatment records indicate Mr. Weber performed a total of nine pesticide treatments between 5-19-12 and 8-9-13. Therefore, the evidence substantiates the fact that Mr. Weber performed pest control treatments outside the 90-day grace period for being uncertified.

As a result of the OPM's investigation, the Interim Director of the Office has determined that you have committed the following violation(s):

I. VIOLATIONS

1. The business licensee and the qualifying party allowed an unlicensed applicator to apply pesticides more than 90 days from employment.

A.R.S. § 32-2312(E) ("Except as provided in subsection F of this section, each employee of a business licensee applying pesticides shall be licensed in all applicable categories within ninety calendar days after employment.")

A.A.C. R4-29-202(E) ("Under A.R.S. § 32-2312, an unlicensed person employed by a business licensee may apply pesticide for a maximum of 90 days from the date of employment if the unlicensed person is supervised by a licensed applicator or qualifying party")

A.A.C. R4-29-504(F)(4) ("... a qualifying party shall be physically present at the primary business office at least once every 30 days and ensure that all of the following are done: ... Review personnel records to determine whether an applicator employed by the business licensee is licensed in all applicable categories within the time-frames specified by A.R.S. § 32-2312.")

A.A.C. R4-29-504(C) ("A qualifying party shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment.")

A.A.C. R4-29-605(D) ("A business licensee shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment.")

2. The business licensee and the qualifying party failed to ensure the applicator made complete pest management records.

A.A.C. R4-29-307(B)(1,9) ("Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following

information in the service record: 1. Name and address of customer ... 9. Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and the license number of the applicator providing supervision.")

A.A.C. R4-29-501(A) ("A qualifying party shall comply with every provision in Article 3 regarding applicator duties and responsibilities.")

A.A.C. R4-29-504(A) ("A qualifying party shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the [OPM]'s statutes and this Chapter")

A.A.C. R4-29-601(A) ("A business licensee shall comply with every provision in Article 3 regarding applicator duties and responsibilities. A business licensee shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the [OPM]'s statutes and rules")

II. ORDER

It is **ORDERED** that **Moxie Pest Control**, Holder of Business License **8952**, be issued an **Administrative Warning**.

It is further **ORDERED** that **Cynthia Lee Romero**, Holder of Qualifying Party License **1907**, be issued a **Civil Penalty of \$300.00 and obtain 3 hours of continuing education (CE) in the category of Laws or Qualifying Party Responsibilities**, due within 30 days of the Order. The CE shall be separate from that required for renewal purposes. **Failure to comply with the Order shall result in an automatic suspension of the Qualifying Party License.**

This Citation and Order shall automatically take effect thirty one days after receipt if you have not properly exercised your right to request an opportunity for a formal hearing. See A.R.S. §§ 32-2321 & 41-1092.03(B). Your right to a request an opportunity for a formal hearing is set out below. If you do not request an opportunity for a hearing by contesting this Citation and Order, this Citation and Order will serve as the Final Decision and Order of the Acting Director without any additional notification being sent to you.

¹ All statutes and rules referenced in this document were the ones in effect until September 13, 2013, unless otherwise indicated. OPM's statutes and rules underwent significant revisions effective September 13, 2013.

Right to a Hearing

Pursuant to Title 41, Chapter 6, Article 10, A.R.S. § 41-1092 et seq., you have the right to request a hearing to contest any of the above charges and/or associated penalties. Your hearing request must be filed within 30 days of receipt of this citation. Please note that if you request a formal hearing, the Office of Pest Management will schedule the hearing before the Office of Administrative Hearings and the hearing will be presided over by an administrative law judge. After you request a hearing, the Office of Pest Management will serve a Notice of Hearing on you. If you request a hearing, you also have the right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. **The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing.** The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.

2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.06. Appeals of agency actions; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.


Jack Peterson, Interim Director

1/9/14
Date

To file a request for hearing with the Office of Pest Management, you must file a letter requesting a hearing, within thirty (30) days after receipt of this notice addressed to:

Jack Peterson, Interim Director
Arizona Office of Pest Management
1688 W. Adams
Phoenix, AZ 85007

OR to request by FAX:

Attention: Jack Peterson, Interim Director
FAX (602) 542-0466

The Request for Hearing must include the following:

- The contesting party
- The party's address
- The specific action being contested
- A concise statement of the reasons for the request for a hearing